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Financing of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994

Financing of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

Financing of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia for the biennium 2008-2009

Report of the Advisory Committee on Administrative and Budgetary Questions

I. Introduction

1. The Advisory Committee on Administrative and Budgetary Questions has considered the following reports:

(a) The financial reports and audited financial statements for the period ended 31 December 2007 and reports of the Board of Auditors on the International Criminal Tribunal for Rwanda (A/63/5/Add.11) and the International Tribunal for the Former Yugoslavia (A/63/5/Add.12);

(b) The first performance reports for the biennium 2008-2009 of the International Criminal Tribunal for Rwanda (A/63/558) and of the International Tribunal for the Former Yugoslavia (A/63/559);

(c) Revised estimates relating to the budget for the biennium 2008-2009 of the International Criminal Tribunal for Rwanda (A/63/506) and the International Tribunal for the Former Yugoslavia (A/63/513).

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During its consideration of the reports, the Advisory Committee interacted via videoconference with the Presidents, Prosecutors and Registrars of both Tribunals, as well as other representatives of the Secretary-General, who provided additional information and clarification.

II. Reports of the Board of Auditors

2. The Advisory Committee notes that the Board of Auditors issued a modified opinion for both Tribunals with an emphasis of matter on their financial statements for the biennium ended 31 December 2007. The emphasis of matter relates to deficits in the reserves and fund balances of the Tribunals in the amount of $38.5 million for the International Criminal Tribunal for Rwanda and $13.5 million for the International Tribunal for the Former Yugoslavia. The Board points out that, in view of the impending closure of the Tribunals, there is a need to identify the funding sources to be used in the payment of separation and after-service benefits of employees.

3. In this connection, the Advisory Committee recalls that the General Assembly, in its resolution 61/264, decided to revert to the question of the provision for after-service health insurance at its sixty-third session (see A/63/474, paras. 16 and 17). The Committee further recalls its recommendation that the Assembly take up the proposed funding of the after-service health insurance liabilities of the Tribunals in the context of that overall review and consider related additional requirements in the context of the first performance reports of the Tribunals (A/62/578, para. 20). The Committee was informed that a comprehensive report on after-service benefits is to be submitted to the General Assembly at the resumed sixty-third session.

4. The main recommendations of the Board on the accounts of the International Criminal Tribunal for Rwanda for the financial period ended 31 December 2007 are set out in paragraph 8 of its report (A/63/5/Add.11, chap. II). During its consideration of the report, the Advisory Committee was provided additional information and clarification on the following issues:

(a) The need for a clear definition of the objectives of the Chambers and development of specific and measurable expected outputs/performance indicators in the Tribunal's budget (ibid., paras. 46-48). The Committee was informed that the Tribunal was in the process of reviewing its workload indicators in order to develop specific performance standards, as well as optimizing existing systems to provide appropriate analytical tools for the management of the Chambers. The tools, which are expected to be introduced during 2009, will allow an assessment of the use of courtroom space as well as the implementation of performance standards for court proceedings;

(b) Preparation of performance evaluation reports (ibid., paras. 61-67). The Committee was informed that the Tribunal had developed an in-house monitoring and reporting mechanism to ensure that appraisal reports were completed in a timely manner;

(c) Registration of vendors for low-value bidding purposes (ibid., paras. 54-58). The Committee was informed that the recommendation of the Board regarding compliance with paragraph 7.27.2 of the Procurement Manual had been implemented by the Tribunal;

(d) Financial management of the special operations cash fund (ibid., para. 95). The Committee was informed that the International Criminal Tribunal for Rwanda had implemented the recommendation of the Office of Internal Oversight Services and that the Office of the Prosecutor had revised and updated the guidelines for the operations of the fund by incorporating the best practices of the Tribunal's Kigali office;

(e) Physical verification of non-expendable property (ibid., para. 94). The Committee was informed that the International Criminal Tribunal for Rwanda had established time frames for monitoring assets and regularly prepares exception reports for review and corrective action. In addition, physical verifications are also undertaken regularly.

5. **The Advisory Committee notes the efforts under way to develop specific performance standards and analytical tools (see para. 4 (a) above) and looks forward to proposals on these measures in the context of the next budget submission. The Committee also notes the continued high vacancy rates and lead times for the recruitment process, as well as the measures taken to expedite recruitment and retention of staff. It concurs with the recommendation of the Board in this regard (ibid., paras. 68-72; see also para. 19 below).**

6. The main recommendations of the Board on the accounts of the International Tribunal for the Former Yugoslavia for the financial period ended 31 December 2007 are set out in paragraph 7 of the Board's report (A/63/5/Add.12, chap. II).

7. The Advisory Committee notes from paragraphs 46 to 49 of the Board's report that, in view of the impending closure of the Tribunals, a large proportion (67 per cent) of the 211 General Service staff have left the Tribunal between 10 to 12 months before the expiration of their contracts. **The Committee concurs with the Board's recommendation that the Tribunal should continue to explore ways and means of retaining existing staff in order to ensure the successful completion of its mandate.**

III. Performance reports for the biennium 2008-2009

8. An additional appropriation of $7,831,700 gross ($6,948,000 net) is requested for the International Criminal Tribunal for Rwanda, reflecting increases of $8,122,000 and $1,205,500 associated with adjustments to inflation assumptions and standard costs, respectively, offset by a reduction of $1,495,800 relating to changes in exchange rates (A/63/558, table 1).

9. With regard to the International Tribunal for the Former Yugoslavia, an additional appropriation of $13,117,900 gross ($11,404,700 net) is requested, comprising $5,056,600 for changes in exchange rates, $5,494,000 owing to changes in inflation assumptions and $2,567,300 associated with adjustments to cost standards (A/63/559, table 1).

10. As indicated in the two reports, in response to General Assembly resolutions 62/229 and 62/230 on the financing of the Tribunals, the Secretary-General will submit to the Assembly at its sixty-fourth session, a report on the mechanisms and specific parameters for the management of the funds to be appropriated to meet future requirements for pension benefits of the judges of the International Tribunals and eligible beneficiaries.

IV. Revised estimates

11. The Advisory Committee notes that a number of developments have taken place since the approval of the budgets of the Tribunals for the biennium 2008-2009, including the arrest of fugitives and the rejection of cases earmarked for referral to other jurisdictions. In addition, some of the ongoing trials have fallen behind the planned schedule owing to complexity of the proceedings and a number of external factors. As a consequence of these developments, the Tribunals have to plan for additional trials, as well as longer proceedings for ongoing trials. This will have a major impact on their completion strategies, under which they had anticipated a downsizing during the second half of the biennium 2008-2009. Furthermore, the approved budgets of the Tribunals for the biennium 2008-2009 did not provide for the trials of the accused persons still at large. The revised estimates for the Tribunals reflect the additional workload arising from these developments and the modified trial schedules. The Committee also notes that a number of fugitives (13 at the International Criminal Tribunal for Rwanda and 2 at the International Tribunal for the Former Yugoslavia) have yet to be apprehended and tried.

International Criminal Tribunal for Rwanda

12. In its resolution 62/229, the General Assembly approved an appropriation of $267,356,200 gross ($247,466,600 net) for the International Criminal Tribunal for Rwanda for the biennium 2008-2009. The approved budget was based on the trial schedule established at the time of the formulation of the budget proposal and the related completion strategy of the Tribunal, under which the Tribunal anticipated the phasing-out of the function of 339 posts during 2009, comprising 193 posts to be abolished from 1 January 2009 and another 146 posts from 1 July 2009 (see A/63/506, para. 20). The provision for the honorariums for judges was calculated on the basis of the following assumptions: (a) that the full complement of the Tribunal's 20 judges would be fully engaged during 2008, including nine permanent trial judges, two permanent appeals judges and nine ad litem judges; and (b) that a total of nine judges would be required during 2009, including three permanent trial judges, two permanent appeals judges and four ad litem judges.

13. Since the approval of the budget, major developments have taken place that have an impact on the Tribunal's programme of work for 2009, as described in paragraphs 4 to 9 of the Secretary-General's report on the revised estimates (A/63/506). There are to be 10 new trials involving: (a) three recently arrested accused persons; (b) four referral cases to Rwanda rejected by the Trial Chambers; (c) one case previously referred to the Netherlands, which had to be revoked because the Dutch courts did not have jurisdiction to try the case; (d) one case for retrial; and (e) one case which was delayed because of a legal dispute. In addition, the ongoing complex multi-accused and two single cases will carry over into 2009 (ibid., para. 19). Further details on the status of the trials are provided in section III of the report of the Secretary-General.

14. As noted in paragraph 20 of the Secretary-General's report, the latest trial schedule foresees that the level and pace of trial activity up to the third quarter of 2009 would be at 2008 levels. On that basis, the Tribunal would require the continuation, up to 30 September 2009, of the functions of the 339 posts earmarked for abolition during 2009. The funding for the continuation of the aforementioned

functions would be provided through general temporary assistance. The revised judicial workload is outlined in paragraph 22 of the Secretary-General's report. It shows that 3 judges (2 permanent and 1 ad litem) would leave the Tribunal by the end of 2008, with 17 judges (9 permanent and 8 ad litem) remaining from 1 January to 30 September 2009. Five judges (3 permanent and 2 ad litem) would stay on board until 31 December 2009. The Advisory Committee notes that, by its decision 62/421, the General Assembly endorsed the Security Council's decision to extend the terms of office of some of the permanent and ad litem judges (Security Council resolution 1824 (2008)).

15. The additional requirements for the International Criminal Tribunal for Rwanda for the current biennium amount to $28,851,100 gross ($26,959,100). The Advisory Committee was informed that these estimates were formulated on the basis of the costing parameters applied to the initial appropriation and that the application of the recosting parameters used in the first performance report (see para. 8 above) to the proposed revised estimates would entail a further requirement of $1,339,600, resulting from an increase of $2,690,500 for inflation, partially offset by a reduction of $1,350,900 due to changes in exchange rates. The recosted additional requirement would total $30,190,700 gross.

16. The additional resources would provide:

(a) $16.4 million under other staff costs for general temporary assistance to provide for the continuation of the 339 posts planned to be abolished during 2009. Additional information was provided to the Advisory Committee on the breakdown of these posts (see annex I);

(b) $7.2 million for Defence Counsel fees relating to increased trial activity;

(c) $1.3 million for travel;

(d) $1 million under non-staff compensation to provide for honorariums of four permanent judges and four ad litem judges to be extended beyond the period previously contemplated.

17. The Advisory Committee requested clarification on the lump-sum system for Defence Counsel fees and a breakdown of the provision of $7,234,400 requested under contractual services for this purpose. It was informed that resources are allocated for defence teams for individual cases by stages of the procedure, as follows: (a) during the pretrial phase, resources are provided for a defence team comprising four members, one counsel and three support staff of investigators or legal assistants; (b) during the trial phase, resources are provided for a defence team comprising five members, one lead counsel, one co-counsel and three support staff of investigators or legal assistants; and (c) during the appeals phase, full resources are allocated for the lead counsel and one legal assistant, as well an allocation of 250 hours for the fees and expenses of a co-counsel. The Committee was further informed that hourly remuneration varies between $90 to $110 for lead counsel, $80 for co-counsel and $25 for support staff.

18. With respect to the additional requirements of $415,400 under rental of fixed-wing aircraft to provide for increased operation of the United Nations Beechcraft (see A/63/506, para. 32), the Advisory Committee was informed that this mode of transport is required to assure the safety and security of protected witnesses who

cannot use commercial aircraft, as well as to optimize trial proceedings, since there is only one weekly flight between Kigali and Arusha.

19. Additional information provided to the Advisory Committee showed 65 vacant Professional posts and 99 vacant General Service posts as at 30 September 2008, corresponding to a vacancy rate of 16 per cent for both Professional and General Service staff. The Committee is concerned by the continued high vacancy rates, which remain at the levels of 31 December 2007 despite a number of measures taken to retain and recruit staff such as the extension of staff beyond retirement age (see A/63/5/Add.11, chap. II, paras. 68-72; see also para. 5 above). **Notwithstanding the difficulty in recruiting and in retaining staff in the context of the impending closure of the International Criminal Tribunal for Rwanda, the Committee emphasizes the importance of maintaining adequate staff levels to ensure the successful completion of the mandate of the Tribunal and recommends that the Tribunal intensify its efforts in this regard.**

International Tribunal for the Former Yugoslavia

20. In its resolution 62/230, the General Assembly appropriated a total amount of $347,566,900 gross ($316,472,100 net) for the International Tribunal for the Former Yugoslavia for the biennium 2008-2009. The approved budget was established on the basis of the trial schedule applicable at the time of the preparation of the budget for the biennium 2008-2009 and the related completion strategy of the Tribunal, under which the Tribunal envisaged the phasing-out of 258 posts during the second half of 2009, including 100 posts to be abolished from 1 August 2009 and 158 posts from 1 November 2009.

21. The major developments having an impact on the Tribunal's programme of work for 2009 are described in paragraphs 4 to 11 of the Secretary-General's report (A/63/513). Further details on the status of the trials are provided in section III of the Secretary-General's report. The Advisory Committee notes that two of the four fugitives at large were arrested and transferred to the Tribunal during the summer of 2008. In addition, there have been changes in the anticipated completion dates of ongoing trials as compared to the dates foreseen in the 2008-2009 budget. The Committee was informed that this was due to the complexity of the proceedings, as well as a number of external factors such as the health of the accused, requests for replacement of Defence Counsel and self-representation, disclosure of new material, delays in disclosure by States and the availability of witnesses to testify in The Hague.

22. As noted in paragraph 11 of the Secretary-General's report, on the basis of the new trial schedule, the Tribunal anticipates that there will be no decrease in trial activity in 2009 as originally planned, but that the pace of trial activity in 2009 will remain at 2008 levels. The Committee notes that, by its decision 63/402, the General Assembly endorsed the Security Council's decision to extend the terms of office of some of the permanent and ad litem judges. (Security Council resolution 1837 (2008)).

23. The additional requirements for the International Tribunal for the Former Yugoslavia for the current biennium amount to $16,043,500 gross ($14,979,500 net). The Advisory Committee was informed that the application of the recosting parameters used in the first performance report to the proposed revised estimates (see para. 9 above), would result in a net decrease of $495,400, reflecting the

combined effect of a lower requirement of $758,700 owing to changes in the exchange rate, partially offset by an increase of $263,300 for inflation. The recosted additional requirement would amount to $15,548,100 gross.

24. The additional resources would provide:

(a) $8.7 million under general temporary assistance for the continuation of the 258 posts planned to be abolished during the second half of 2009. Additional information was provided to the Advisory Committee on the breakdown of these posts (see annex II);

(b) $5.4 million for Defence Counsel fees relating to increased trial activity;

(c) $0.6 million for travel;

(d) $0.2 million under non-staff compensation to provide for honorariums for three ad litem judges for an additional 11 work-months to support the additional trials in accordance with the revised trial schedule.

25. From the additional information provided, the Advisory Committee notes that there were 34 vacant Professional posts and 18 vacant General Service posts as at 30 September 2008, corresponding to vacancy rates of 7.5 per cent for Professional and 3.4 per cent for General Service staff. In comparison, the budget for the biennium 2008-2009 was established on the assumption of vacancy rates of 9.5 per cent and 7.9 per cent for Professional and General Service staff, respectively.

Status of expenditures

26. Upon request, the Advisory Committee was provided an updated status of expenditures of the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia at 30 November 2008, as shown in tables 1 and 2. The Committee notes that, almost halfway through the biennium, expenditures levels under some items, such as other staff costs, appear to be low. At the International Tribunal for the Former Yugoslavia, for example, some $10 million has been spent against a budget of $39 million for other staff costs. It was informed that, in the case of both Tribunals, most of the provision under this item was budgeted for the second year of the biennium to provide for general temporary assistance in lieu of posts that were to be abolished during 2009.

Table 1
Updated status of expenditures of the International Criminal Tribunal for Rwanda as of 30 November 2008

Description	*Appropriation 2008-2009*	*Expenditures (Nov. 2008)*
Posts	170 097.2	86 345.6
Other staff costs	16 556.4	2 526.7
Non-staff compensation	8 362.5	4 505.2
Consultants and experts	1 034.0	66.7
Travel of representatives	634.4	253.5
Travel of staff	4 977.6	2 489.6
Contractual services	23 714.2	13 411.5
General operating expenses	13 485.6	5 083.2
Hospitality	7.1	2.1
Supplies and materials	3 172.9	1 078.4
Furniture and equipment	2 347.7	540.5
Improvement of premises	289.8	96.1
Grants and contributions	2 787.2	1 294.5
Staff assessment	19 889.6	11 158.1
Total	**267 356.2**	**128 851.7**

Table 2
Updated status of expenditures of the International Tribunal for the Former Yugoslavia as of 30 November 2008

Description	*Appropriation 2008-2009*	*Expenditures (Nov. 2008)*
Posts	162 119.7	91 166.3
Other staff costs	39 214.7	10 212.7
Non-staff compensation	12 934.1	7 562.6
Consultants and experts	857.7	368.5
Travel of staff	5 513.4	2 873.9
Contractual services	60 254.1	26 418.5
General operating expenses	29 140.8	13 169.1
Hospitality	16.3	5.7
Supplies and materials	2 248.7	720.2
Furniture and equipment	3 561.8	210.3
Improvement of premises	320.4	21.4
Grants and contributions	290.4	254.4
Staff assessment	31 094.8	16 130.7
Total	**347 566.9**	**169 114.3**

V. Conclusion

First performance reports for the biennium 2008-2009

27. The actions to be taken by the General Assembly are outlined in the first performance reports for the biennium 2008-2009 for the International Criminal Tribunal for Rwanda (A/63/558, para. 11) and the International Tribunal for the Former Yugoslavia (A/63/559, para. 11). The Assembly is requested to take note of the reports and to approve additional appropriations for the biennium 2008-2009 in the amount of:

(a) $7,831,700 gross ($6,948,000 net) to the Special Account for the International Criminal Tribunal for Rwanda;

(b) $13,117,900 gross ($11,404,700 net) to the Special Account for the International Tribunal for the Former Yugoslavia.

28. **The Advisory Committee recommends approval of the Secretary-General's proposals.**

Revised estimates for the biennium 2008-2009

29. With respect to the revised estimates for the biennium 2008-2009, the actions to be taken by the General Assembly are outlined in the reports of the Secretary-General on the revised estimates for the International Criminal Tribunal for Rwanda (A/63/506, para. 35) and the International Tribunal for the Former Yugoslavia (A/63/513, para. 40). The Assembly is requested to take note of the reports and to approve additional appropriations for the biennium 2008-2009 in the amount of $28,851,100 gross ($26,959,100 net) to the Special Account for the International Criminal Tribunal for Rwanda (A/63/506, para. 35 (b)) and $16,043,500 gross ($14,979,500 net) to the Special Account for the International Tribunal for the Former Yugoslavia (A/63/513, para. 40 (b)).

30. **Taking into account the recosting of the additional requirements (see paras. 15 and 23 above), the Advisory Committee recommends that the General Assembly approve additional appropriations for the biennium 2008-2009 in the amount of:**

(a) **$30,190,700 gross to the Special Account for the International Criminal Tribunal for Rwanda;**

(b) **$15,548,100 gross to the Special Account for the International Tribunal for the Former Yugoslavia.**

Annex I

International Criminal Tribunal for Rwanda

Breakdown of general temporary assistance related to the posts to be abolished in the Office of the Prosecutor and the Registry

Office of the Prosecutor

Level	*Number of reinstated posts (through general temporary assistance) effective 1 January 2009*[a]	*Estimated costs for reinstatement of posts (through general temporary assistance) (Thousands of United States dollars)*
P-5	5	**748.0**
P-4	5	**644.0**
P-3	23	**2 520.8**
P-2	23	**2 024.0**
GS (OL)	6	**494.4**
LL	5	**84.0**
Total	**67**	**6 515.2**

Registry

	Number of reinstated posts (through general temporary assistance) effective		*Estimated costs for reinstatement of posts (through general temporary assistance) (Thousands of United States dollars)*		
Level	*1 January 2009*[a]	*1 July 2009*[b]	*1 January 2009*[a]	*1 July 2009*[b]	*Total*
P-5	2	—	273.0	—	**273.0**
P-4	2	2	226.6	96.6	**323.2**
P-3	8	14	749.7	575.4	**1 325.1**
P-2	12	28	882.8	924.0	**1 806.8**
GS (PL)	—	1	—	28.2	**28.2**
GS (OL)	27	19	1 978.8	587.1	**2 565.9**
LL	56	60	825.4	378.0	**1 203.4**
SS	19	18	1 379.9	556.2	**1 936.1**
FS	—	4	—	112.8	**112.8**
Total	**126**	**146**	**6 316.2**	**3 258.3**	**9 574.5**

[a] Posts that have been scheduled for abolition effective 1 January 2009 are being reinstated through provision of general temporary assistance for a period of nine months through 30 September 2009.

[b] Posts have been abolished effective 1 January 2009 and provided with equivalent general temporary assistance resources for a period of six months. The current proposal is to extend the general temporary assistance arrangement for an additional three months through 30 September 2009.

Abbreviations: GS (OL), General Service (Other level); GS (PL), General Service (Principal level); SS, Security Service; LL, Local level; FS, Field Service.

Annex II

International Tribunal for the Former Yugoslavia

Breakdown of general temporary assistance related to the posts to be abolished in the Office of the Prosecutor and the Registry

Office of the Prosecutor

	Number of reinstated posts (through general temporary assistance) effective		*Estimated costs for reinstatement of posts (through general temporary assistance) (Thousands of United States dollars)*		
Level	*1 August 2009*[a]	*1 November 2009*[b]	*1 August 2009*[a]	*1 November 2009*[b]	*Total*
P-5	3	4	216.0	115.2	**331.2**
P-4	8	14	492.0	344.4	**836.4**
P-3	12	18	600.0	360.0	**960.0**
P-2	1	7	41.0	114.8	**155.8**
GS (OL)	41	22	1 127.5	242.0	**1 369.5**
Total	**65**	**65**	**2 476.5**	**1 176.4**	**3 652.9**

Registry

	Number of reinstated posts (through general temporary assistance) effective		*Estimated costs for reinstatement of posts (through general temporary assistance) (Thousands of United States dollars)*		
Level	*1 August 2009*[a]	*1 November 2009*[b]	*1 August 2009*[a]	*1 November 2009*[b]	*Total*
P-4	—	1	—	24.6	**24.6**
P-3	7	13	350.0	260.0	**610.0**
P-2	3	16	123.0	262.4	**385.4**
GS (OL)	20	48	550.0	528.0	**1 078.0**
SS	5	15	137.5	165.0	**302.5**
Total	**35**	**93**	**1 160.5**	**1 240.0**	**2 400.5**

[a] Posts have been abolished effective 1 January 2009 and provided with equivalent general temporary assistance resources for a period of seven months. The current proposal is to extend the general temporary assistance arrangement for an additional five months through 31 December 2009.

[b] Posts have been abolished effective 1 January 2009 and provided with equivalent general temporary assistance resources for a period of 10 months. The current proposal is to extend the general temporary assistance arrangement for an additional two months through 31 December 2009.

Abbreviations: GS (OL), General Service (Other level); GS (PL), General Service (Principal level); SS, Security Service; LL, Local level; FS, Field Service.